***THE HON'BLE SRI JUSTICE V.ESWARAIAH**

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+ W.P.No.26379 of 2003 and C.C.No.776 of 2004

%Dated 28.09.2004

Smt.R.Janaki,

W/o.Late Dr. RRS Prakasa Rao

Aged about 68 years,

R/o. House No.16/6/43,

Kodugantivari Veedhi,

Vizianagaram .. Petitioner

Vs.

$ The Secretary to Government,

Education Department, School Education,

Secretariat, Hyderabad

2. The Commissioner and Director of School

Education, Government of Andhra Pradesh

Hyderabad

3 The Accountant General, Andhra pradesh,

Hyderabad

4 The District Educational Officer, Vizianagaram

5 The Correspondent, M.R.College of Education,

Fort, Vizianagaram .. Respondents

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>HEAD NOTE:

! Counsel for the Petitioner: Sri V.Jogaiah Sarma & V.Venkata Rao

^Counsel for the Respondent No.1: Sri A.Rajashekar Reddy (SC for C.G.)

^ Counsel for the Respondent Nos.1 to 4: G.P. for School Education

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

W.P.NO : 26379 of 2003

And

C.C.No.776 of 2004

W.P.No.26379 of 2003**:**

Between:

Smt R.Janaki, W/o Late Dr.RRS Prakasa Rao,
R/o H.No.16-6-43, Kodugantivari Veedhi, Vizianagaram.

..... PETITIONER

AND

1 The Secretary to Government, Education Department, School Education, Secretariat, Hyderabad.
2 The Commissioner and Director of School Education, Government of Andhra Pradesh, Hyderabad.
3 The Accountant General, Andhra Pradesh, Hyderabad.
4 The District Educational Officer, Vizianagaram.
5 The Correspondent, M.R.College of Education, Fort, Vizianagaram.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or Order or direction, especially one in the nature of Mandamus (i) declaring the impugned letter No.P.16/III/P.326/FP-124/93-10/Rev-204/25, dated 20-4-2001 of the Accountant General (A & E), A.P.Hyderabad and all consequential proceedings as illegal, arbitrary and without jurisdiction and set aside the same; ii) declare that the petitioner is eligible and entitled re-fixation of family pension on the basis of last pay drawn by her demised husband and grant all pensionary benefits from 1-11-1992; iii) direct the respondents to grant admissible interest on the pension amount due to the petitioner on the basis of the above fixation.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG) FOR GP FOR SCHOOL EDUCATION FOR R1 TO 4

CONTEMPT CASE NO : 776 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 19.12.2003 in WPMP No.33366 of 2003 in W.P No. 26379 of 2003.

Between:

Smt. R. Janaki, W/o Late Dr. RRS Prakasa Rao,
R/o H.No. 16-6-43 Kodugantivari Veedhi,
vizianagaram.

..... PETITIONER

AND

1 Sri I.V.Subba Rao, Secretary to Government,
Education Department (School Education), Secretariat,
Hyderabad.
2 Sri Krishnaiah, The Commissioner and Director of School
Education, Government of A.P., Hyderabad.
3 Sri Parven Mehta,
The Accounts General, A.P.
Hyderabad.
4 A.V. Daniel, The District Educational Officer,
Vizianagaram.
5 K. Venkatapathi Raju, The Correspondent,
M.R. College Of Education, Fort,
Vizianagaram.

.....RESPONDENT(S)

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent Nos.1 to 4: G.P. for School Education

Counsel for the Respondent No.5: SMT.N.INDRANI

The Court made the following :

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COMMON ORDER:

The petitioner questions the proceedings dated 20.4.2001 of the

Accountant General, A.P., Hyderabad, wherein the proposals submitted for payment of the family pension to the petitioner were rejected on the ground that the petitioner's husband died on 25.2.1992 i.e. before 1.11.1992, and he was not eligible for the revised family pension under the Andhra Pradesh Revised Pension Rules, 1980 as per the A.P. Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 issued in G.O.Ms.No.2, Education (C.E.-III), dated 5.1.1994.

This Court, by an order dated 19.12.2003 granted interim order directing the respondents to consider the case of the petitioner for grant of revised pension as per the rules and decision of this Court in W.A.No.1219 of 1999 and batch, dated 3.8.1999. As the said interim direction was not complied with, Contempt Case No.776 of 2004 was filed on 30.6.2004. After filing of the Contempt Case, the District Educational Officer, Vizianagaram passed an order, dated 24.7.2004 rejecting the case for payment of family pension to the petitioner on the ground that it is not possible or feasible to grant family pension in terms of G.O.Ms.No.2, dated 5.1.1994 as the said Government Order is applicable to the teachers who have retired from service between the period from 29.10.1979 to 1.11.1992. In the instant case, the husband of the petitioner Dr. R.R.S.Prakash Rao died on 25.2.1992 i.e. before 1.11.1992, therefore, he is not eligible for the revised family pension under the Revised Pension Rules, 1980. The Accountant General, vide his letter No.ALP/PLC/03-04/505, dated 9.2.2004 rightly rejected the case of the petitioner as she is not eligible for the revised family pension as per the G.O.Ms.No.2, dated 5.1.1994.

The learned counsel appearing for the petitioner has submitted that the action of the respondents in not sanctioning the revised family pension to the petitioner is illegal and he prays to issue a direction declaring that the petitioner is eligible and entitled to re-fixation of the family pension on the basis of last drawn pay by her demised husband and for grant of pensionary benefits from 1.11.1992 and also to direct the respondents to grant admissible interest on the pension amount to the petitioner on the basis of the above fixation.

The brief facts that are necessary for the purpose of disposal of these cases may be delineated as follows:

The petitioner's husband late Dr.R.R.S.Prakasha Rao joined in the service of 5th respondent-M.R.College of Education, Vizianagaram on 2.9.1966. He worked as Head of the Department of Physical Sciences for more than 25 years and died on 25.2.1992. The pay scale of her husband was Rs.4,450/- plus Rs.25/- (FPA) in the year 1986 UGC scales of pay of Rs.3700-125-4950-150-5700/- as on the date of his death. It is stated that the 5th respondent submitted pension proposals vide his letter, dated 5.10.1992 to the District Educational Officer, Vizianagaram, who in turn submitted the same to the Director of School Education vide his letter dated 28.10.1992 requesting to sanction the family pension and forward the proposals to the Accountant General for releasing the pensionary benefits. The Accountant General fixed the pension of Rs.500/- for the first seven years, thereafter, the family pension was paid at the rate of Rs.250/- per month as per his order dated 6.12.1993. The petitioner has requested the District Educational Officer for sanction of the revised pension vide her representation, dated 4.5.1995. The District Educational Officer sent the proposals to the Commissioner and Director of school Education, A.P., Hyderabad, who in turn forwarded the same to the Accountant General for payment of the revised family pension. The Accountant General, vide his letter, dated 20.4.2001, returned the said proposals on the ground that the petitioner's husband died on 25.2.1992 i.e. before 1.11.1992 and therefore, she is not eligible for the revised family pension. It is stated that against the said action, she has filed a complaint before the A.P. Lokayukta and the Lokayukta rejected the said complaint stating that the A.P. Accountant General is not within the purview of Lokayukta. Therefore, the petitioner has field this writ petition questioning the action of the respondents in rejecting the revised family pension to her.

The learned counsel appearing for the petitioner has contended that

the action of the respondents denying the revised family pension to the petitioner on the ground that her husband died before 1.11.1992 is illegal and contrary to the Revised Pension Rules, 1980 which came into force with effect from 29.10.1979 and was also adopted *mutatis mutandis* vide orders in G.O.Ms.No.2, dated 5.1.1994. It is further stated that the issue raised in this writ petition is squarely covered by the judgment of this Court in W.P.No.8665 of 1996 and batch, dated 28.11.1997, which was confirmed by the Division Bench of this Court in W.A.No.1219 of 1998 and batch, dated 2.8.1999. It is contended that the pension/family pension according to the Revised Pension Rules has to be made applicable to those who retired/died between 29.10.1979 and 1.11.1992 and therefore, the action of the Accountant General rejecting to extend the benefit of family pension under the Revised Pension Rules is illegal and unsustainable.

The 1st, 2nd and 4th respondents filed counters stating that the petitioner's husband, who worked as Lecturer in Physical Sciences, M.R. College of Education, Vizianagaram expired on 25.2.1992 while in service. The revised Pension Rules, 1980 were made applicable to the teaching staff working in aided colleges by the Government of Andhra Pradesh vide G.O.Ms.No.2, dated 5.1.1994. The said Government Order came into force from 1.11.1992. As per the Government Order, it is applicable to the teaching and non-teaching staff of the Private Aided Degree, Oriental Junior Colleges who retired from service on attaining the age of 58 years and who were alive as on 1.11.1992. But, the husband of the petitioner died before 1.11.1992 i.e. on 25.2.1992 while in service and therefore, the petitioner is not entitled for the revised family pension as her husband was not alive on 1.11.1992. Therefore, the Revised Pension Rules, 1980 cannot be extended to late Dr. R.R.S.Prakash Rao as he was not alive on 1.11.1992. The petitioner is not entitled to any relief even as per the judgment of this Court in W.P.No.8665 of 1996 and batch as confirmed by the Division Bench in W.A.No.1219 of 1998 as this Court never considered the case of any person who died before 1.11.1992 while in service. In fact, this Court has directed that in case

any pensioner, who retired during the period and expired as on the date, the arrears arising out of the said re-fixation shall be paid to the wife or the legal heirs of the deceased pensioner. The words 'The Date" referred to in the said judgment only mean 1.11.1992 i.e. the date from which G.O.Ms.No.2, dated 5.1.1994 came into force and the Government Order is clear and unambiguous and it applies to those who have not only retired but also who are alive as on 1.11.1992. As the husband of the petitioner does not satisfy the aforesaid conditions, her claim was rightly rejected by the Accountant General vide his letter No.ALP/PLC/03-04/505, dated 9.2.2004.

The A.P. Revised Pension Rules, 1980 issued in G.O.(P) No.88, Finance and Planning, dated 26.3.1980 came into force with effect from 29.10.1979. Those rules are applicable to the Government Servants who are in service as on 29.10.1979. Rule-50 (3)(a)(i) of the Revised Pension Rules, 1980 reads as follows:

> *"Where a Government servant dies while in service after having rendered not less than seven years of continuous service, the rate of family pension payable to the family shall be equal to 50% of the pay last drawn and the amount so admissible shall be payable from the date following the date of death of the Government servant for a period of seven years or till the date on which the Government servant would have reached the age of sixty five years had he remained alive whichever is earlier."*

Sri V.Venkata Rao, learned counsel for the petitioner has submitted that the petitioner is entitled to the payment of the family pension under Rule-50(3)(a)(i) of the Revised Pension Rules, 1980 read with G.O.Ms.No.2, dated 5.1.1994. The A.P. Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 came into force with effect from 1.11.1992.

The teaching and the non-teaching staff working in the aided degree or junior colleges are not automatically entitled to the revised family pension under the Revised Pension Rules, 1980 which came into

force with effect from 29.10.1979. Those Rules were enacted and made applicable vide orders in G.O.Ms.No.2, education (C.E-III), dated 5.1.1994 which are called “The Andhra Pradesh Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 (for brevity “ Pension Rules, 1993”). The Pension Rules, 1993 came into force only with effect from 1.11.1992. No person, who died before 1.11.1992 is entitled to the revised family pension. The Pension Rules, 1993 consist of three parts. Part-A is in respect of teaching and non-teaching staff, who retired from service on attaining the age of 58 years and the last grade staff who retired from service on attaining the age of 60 years. Part-B deals with the persons who retired on attaining the age of 60 years and it has no application. Part-C also has no application to the facts of the case. We are concerned with Part-A, which is relevant to be noted and it is extracted as follows:

PART-A:

a. *The Andhra Pradesh Revised Pension Rules, 1980 shall apply mutatis mutandis to all the teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 58 years and the members belonging to the Last Grade Service of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of 60 years before or after the commencement of the Andhra Pradesh Education (Amendment) Act, 1993 and are alive.*

b. ***Re-fixation of pension***:- *Such of the Teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who have retired at the age of 58 years, even prior to commencement of Act No.17 of 1993 shall be eligible to claim re-fixation of pension under these Rules, with effect from 1.11.1992 or the date of their retirement, whichever is later. These staff members would also be eligible for arrears of pension from 1.11.1992. However, such staff members shall not be eligible for any increased Gratuity. They shall also not*

be eligible for commutation on account of increase in the pension."

A batch of writ petitions have been filed questioning Part-A in Rule-2 of the Pension Rules, 1993 in G.O.Ms.No.2, Education (C.E-III), dated 5.1.1994 in W.P.No.8665 of 1996 and batch. This Court considered the issue as regards the eligibility to the revised pension as per the Revised Pension Rules, 1980 for the employees, who retired and are alive as on 1.11.1992. The question was also considered with regard to the cases of the widows whose husband died between the commencement of the Revised Pension Rules, 1980 and 1.11.1992. In the said batch of writ petitions, it was also held that the benefits under the Revised Pension Rules, 1980 are made applicable *mutatis mutandis* to the persons who are alive as on 1.11.1992 and re-fixation of the pension is made with effect from that date. The contention as regards the teachers, who retired between 29.10.1979 to 1.11.1992 were denied the benefit under the Revised Pension Rules, 1980; and also the contention of the respondents that the persons who retired in between 29.10.1979 to 1.11.1992 are not entitled to the pension as per the Revised Pension Rules, 1980 was considered. It was also held that both the teachers who retired prior to 1.11.1992 and subsequent to 1.11.1992 are entitled to the benefits arising out of the Revised Pension Rules, 1980. Last but one sentence under (b) in Part-A of Rule-2 of the Pension Rules, 1993 namely "However, such staff members shall not be eligible for any increased Gratuity" was deleted. After deleting the said sentence, the learned single Judge of this Court held that the teachers and other staff working in Private Aided Colleges, who retired from service between 29.10.1979 and 1.11.1992 shall also be eligible to the benefit under Revised Pension Rules, 1980 with effect from retrospective dates of their retirement and their pension shall be notionally fixed taking into account the increases if any made from the date of the retirement till 1.11.1992. In case any pensioner who retired during the period and expired as on the date, the arrears

arising out of the said re-fixation shall be paid to the wife or legal heirs of the deceased pensioner. The said judgment was confirmed by the Division Bench in W.A.No.1219 of 1979 and batch, dated 3.8.1999 wherein it was held as regards the entitlement of the pension to the teachers, who retired in between 29.10.1979 and 1.11.1992. I have perused the entire judgement of the learned single Judge as well as the Division Bench.

A careful reading of the judgment of the learned single Judge clearly shows that the pensionary benefits under the Revised Pension Rules, 1980 are made applicable *mutatis mutandis* to the persons, who are alive as on 1.11.1992 and re-fixation of the pension is made with effect from that date. Part-A of Rule-2 of the Pension Rules, 1993 clearly indicates that A.P. Aided Colleges Staff Pension Rules, 1993 shall apply *mutatis mutandis* to all the teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who retired from service on attaining the age of superannuation before or after commencement of the A.P. Education (Amendment) Act, 1993 and are alive. Admittedly, the learned single Judge of this Court has not deleted the words “are alive” from the paragraph (a) in part-A of Pension Rules, 1993 issued in G.O.Ms.No.2, dated 5.1.1994. Therefore, in view of the said rule, it is not possible for this Court to hold that the teaching and non-teaching staff of Private Aided Degree, Oriental and Junior Colleges who are not alive as on 1.11.1992 are also entitled to the benefits arising out of the Revised Pension Rules, 1980. The petitioner is not automatically entitled to the revised pension, but her entitlement is only subject to the conditions laid down in G.O.Ms.No.2, dated 5.1.1994. As per the Rules, the retired persons who are alive as on 1.11.1992 alone are entitled to the revised pension.

Having regard to the facts and circumstances of the case, I am of the view that the petitioner is not entitled to any relief in this writ petition and I do not find any illegality in the impugned letter No.ALP/PLC/03-04/505, dated 9.2.2004 issued by the 3rd respondent rejecting the claim of the petitioner and the writ petition is

devoid of merits.

Accordingly, the writ petition is dismissed. In view of the dismissal of the writ petition, the Contempt Case is also dismissed with a liberty to the petitioner to question the validity and illegality of the condition imposed in Part-A in Rule-2 of The Andhra Pradesh Aided Degree, Oriental and Junior Colleges Staff Pension Rules, 1993 which came into force with effect from 1.11.1992. No order as to costs.

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(V.ESWARAIAH, J.)

28th September, 2004.

Note: L.R. copy to be marked.

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To

One fair copy for the Honourable Sri Justice V.Eswaraiah (for his Lordships kind perusal)

1 The Secretary to Government, Education Department, School Education, Secretariat, Hyderabad.
2 The Commissioner and Director of School Education, Government of Andhra Pradesh, Hyderabad.
3 The Accountant General, Andhra Pradesh, Hyderabad.

4 The District Educational Officer, Vizianagaram.
5 The Correspondent, M.R.College of Education,
Fort, Vizianagaram.

6 Two C.Cs. to the Government Pleader for School Education, High Court Buildings, Hyderabad (O.U.T)

7. 8 L.R. copies.

8 The Under Secretary, Union of India, Ministry of Law, Justice and Company affairs, New Delhi.

9 The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

10 Two C.D. copies.